

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 THE POLSON SCHOOL DISTRICT

7 FINDINGS OF FACT, CONCLUSIONS OF LAW,
8 ORDER, AND MEMORANDUM OPINION

9 These informal contested case proceedings were filed before the Commissioner
10 of Political Practices (Commissioner) to consider the appeal of the principal
11 referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306,
12 the principal appealed the Commissioner's assessment of a civil penalty resulting
13 from its late filing of a post-special session lobbying disclosure report. The principal
14 filed a written Waiver of Hearing waiving its right to an in-person hearing, and
15 submitted a written statement for the Commissioner's consideration.

16 Based on the written submission of the principal, the documents of record in the
17 Commissioner's file, and the applicable law, the Commissioner makes the following
18 findings of fact, conclusions of law, and order.

19 **FINDINGS OF FACT**

20 1. The Polson School District (District) is a principal registered with the
21 Commissioner.

22 2. § 5-7-306, MCA, establishes civil penalties that are required to be assessed against
23 any person who fails to file lobbying financial disclosure reports within the time required
24 by law.

25 3. The post-session lobbying financial disclosure report following adjournment
26 of the September, 2007 special session was required to be filed no later than October 5,
27 2007.

 4. Prior to the due date the office of the Commissioner emailed a "friendly

1 reminder” to all principals, including the District. The email advised that a post-
2 special session lobbying financial disclosure report was required to be filed no later
3 than October 5, 2007. The email referenced the appropriate form that was required to
4 be filed, known as a form L-5A, and noted that the form was available for download
5 on the Commissioner’s website.

6 5. The District failed to file its L-5A on or before the due date.

7 6. On October 11, 2007, the Commissioner sent a letter via email to the District
8 stating that an L-5A report was due by October 5, 2007, but had not been received.
9 The letter stated that a civil penalty started being assessed on October 9, 2007 at \$50
10 per day, and would continue until the report was filed or until the penalty amount
11 reached \$2,500. The letter urged the principal to fax the delinquent report
12 immediately, followed by a hard copy.

13 7. On October 23, 2007, the principal filed its report. Because the report was
14 filed ten business days late, a fine of \$500 was assessed.

15 8. The District requested a hearing to contest the civil penalty. The
16 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on
17 October 26, 2007. The District filed a written Waiver of Hearing and submitted a
18 written statement for the Commissioner’s consideration.

19 9. In the written statement Theresa Taylor noted that she did not realize a post-
20 session report was required to be filed after the special session. She requested that the
21 penalty be waived.

22 10. The District reported no lobbying payments during the regular session and no
23 lobbying payments during the special session.

24 **CONCLUSIONS OF LAW**

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26 1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604
27 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

Civil penalties for delays in filing -- option for hearing --

suspension of penalty. (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2)(c), MCA, requires a lobbying financial disclosure report to be filed with the Commissioner “no later than 30 days following adjournment of a legislative session,” and the report must include “all payments made during the session, except as previously reported.” If payments are not made during the reporting period, the principal must file a report stating that fact. § 5-7-208(4), MCA.

5. The second sentence of § 5-7-208(1), MCA, states:

A principal is subject to the reporting requirements of this section only if the principal makes payments exceeding the amount specified under 5-7-112 during a calendar year.

6. § 5-7-112, MCA established a monetary threshold of \$2,150 for calendar years 2002 through 2004. The threshold amount is adjusted according to the consumer price index in the year following a general election. The adjusted payment threshold for calendar years 2007 and 2008 is \$2,300. ARM 44.12.204.

MEMORANDUM OPINION

Information contained in the file maintained in the Commissioner’s office establishes that the District registered to lobby but did not report any lobbying

1 expenses during the regular or special sessions of the Legislature. While § 5-7-
2 208(4), MCA requires principals to file reports even if no payments were made
3 during a particular reporting period, the key language in § 5-7-208 is the second
4 sentence in subsection (1): “A principal is subject to the reporting requirements of
5 this section only if the principal makes payments exceeding the amount specified
6 under 5-7-112 to one or more lobbyists during a calendar year.” As noted in
7 Conclusion of Law 6, the threshold amount for calendar year 2007 is \$2,300. Since
8 the District reported spending less than the threshold amount that triggers the
9 reporting requirements of § 5-7-208, it was not subject to the reporting provisions of
10 the statute. There are sufficient factors or circumstances in mitigation to justify
11 waiver of the civil penalty.

12 **ORDER**
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14 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed
15 against the Polson School District is waived.

16 DATED this 20th day of December, 2007.

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19 _____
20 Dennis Unsworth
21 Commissioner of Political Practices
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NOTICE: This is a final decision in a contested case. You have the right to seek judicial review of this decision pursuant to the provisions of §§ 2-4-701 through 2-4-711, MCA.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

Theresa Taylor
Polson School District
111 4th Ave. East
Polson, MT 59860

DATED: December 20, 2007

Mary Baker
Program Supervisor